

[REDACTED]²³, ²⁴, ²⁵. Those additional evaluations were conducted in October 2005 in anticipation that the parties would meet on December 20, 2005²⁶ to develop an IEP which would be acceptable to Petitioner's mother and that Petitioner's mother would enroll Petitioner in the Respondent School District.

However, at the December 20 meeting, Petitioner's mother rejected the Respondent School District's eligibility classifications. At the 20-participant IEP conference conducted on December 20, Petitioner's mother indicated that she disagreed with the evaluations and she said that she thought that the eligibility categories should be [REDACTED] and [REDACTED] and [REDACTED]. In terms of what Petitioner's mother identified as the deficiencies in the IEP eligibility

²³Additional evaluations were not conducted until after the undersigned ordered Petitioner's mother to sign consents for such evaluations.

²⁴It is remarkable that, while Petitioner's mother was disowning the Respondent School District's eligibility determination based on [REDACTED] she was **actively** procuring services for Petitioner through the Division of Developmental Disabilities (DDD).

²⁵ It is noteworthy that the audiological evaluation conducted at ASU would have been biased based on the information provided by Petitioner's mother which showed that Petitioner's current diagnoses of [REDACTED] "would have negatively biased the results of the APD test battery without (sic) providing little if any, information regarding Petitioner's [name deleted] processing capabilities.

²⁶As ordered by the undersigned.

categories, the December 20 meeting was a complete waste of time²⁷ and that, regardless of the panoply of services offered to Petitioner, so long as the IEP identified '[REDACTED]' as an eligibility criterion, Petitioner's mother would, without any evidence to the contrary, disagree with the IEP team members²⁸ and would reject the offer to enroll Petitioner in the Respondent School District to implement the IEP²⁹.

Between the time of the IEP meeting on December 20 and when the due process hearing commenced, no new evaluations were presented to the Respondent School District from which it could reconsider its eligibility categories³⁰. The due process hearing then commenced³¹ on January 27,

²⁷Confirmed when Petitioner's mother got angry, accused the Special Education Director of being a "liar" and left the meeting.

²⁸The IEP developed at the August 5, 2005 meeting was the starting point for the discussion at the December 20 meeting and the August 5 draft IEP carried forward Petitioner's categorical eligibility as '[REDACTED]'.

²⁹Petitioner's mother tried to obtain an order from the undersigned designating the private school in which Petitioner is enrolled as his 'stay put' placement. Her request was summarily denied.

³⁰Prior to the hearing, the undersigned ordered Petitioner's mother to identify every objection she had to the December 20, 2005 IEP. The sole objection she raised was the eligibility categorization of '[REDACTED]' rather than '[REDACTED]'.

³¹Even though Petitioner was informed before the hearing and at the outset of the hearing that she bore the burden of proving that the December 20 IEP is not appropriate for Petitioner under the Supreme Court decision of Shaffer v. Weast, the undersigned directed that the Respondent School District present a prima facie case about how the December 20 IEP was created. The District identified 4 witnesses for its prima facie case.

2006, was resumed on February 7 and again resumed on February 21. During the February 21, 2006 hearing (which began at 5:00 P.M.), while the Respondent School District was presenting its 4th witness (the special education director), Petitioner's mother stopped paying attention to the testimony (at approximately 7:15 P.M.), she got angry and she left the hearing³². At no time during any of the three days of hearing was any evaluation presented showing that Petitioner functioned in the normal intelligence range or that Petitioner's learning was not delayed as a result of cognitive and adaptive deficits³³.

In fact, the focus of Petitioner's mother's chimerical objections seemed to be that, since Petitioner has been diagnosed with [REDACTED] by the 2003 evaluator [name deleted]³⁴, Petitioner's disabilities should be recast as [REDACTED] rather than [REDACTED]. She also seemed to offer that, because the Respondent School District cannot be "certain" that Petitioner's disabilities are being displayed as a result of [REDACTED], that label should be dropped.

³²Picking a fight with the hearing officer is not a recognized persuasion technique.

³³Petitioner's mother was warned that, if she left the hearing, she would be abandoning her due process hearing. As a result of leaving the hearing, Petitioner's mother forfeited the opportunity to present any witnesses to support her burden of proof.

³⁴The same evaluator who diagnosed Petitioner with [REDACTED].

The undersigned does not believe that the diagnosis of [REDACTED] trumps the [REDACTED] diagnosis, that Petitioner's dysfunction in processing information for reading and language arts can be isolated as to cause, that the [REDACTED] diagnosis overrides or degrades the [REDACTED] diagnosis and the undersigned affirmatively believes that the [REDACTED] diagnosis is merely an ingredient requiring interpretation encircling ALL of Petitioner's needs³⁵.

The undersigned further believes that the homogeneity of developing goals and objectives for Petitioner's special education program must address ALL of Petitioner's strengths, weaknesses and limitations. Isolating [REDACTED] as the 'cause' for special education services would vitiate the integrity of an appropriate IEP (and be in violation of State law which requires that [REDACTED] be ruled out).

Sadly, Petitioner's mother's perseveration about Petitioner's categorical limitation regarding eligibility is a distraction from the focus on Petitioner's needs³⁶, especially in light of his history that **always**

³⁵If 'certainty' is the touchstone by which one must judge Petitioner's categorical eligibility, Petitioner's mother failed miserably in her burden of proof obligation.

³⁶On March 17, 2006, the undersigned received a certified package from Petitioner's mother arguing the same reasons why petitioner should be classified in a manner different than the Respondent School District offers in its IEP.

showed a finding of [REDACTED]. Petitioner's mother's echolalia, based on nothing more than anecdotal information showing that Petitioner progressed in his reading skills through intense tutoring, is unconvincing at best and disingenuous at worst.

Unquestionably, Petitioner suffers from a constellation of disabilities, all of which must be addressed in his IEP. As the psychologists and Respondent School District personnel agree, those disabilities must be addressed in a holistic fashion. It is not enough to debauch one element of Petitioner's disabilities in favor of another. The IEP created on December 20 addresses all of Petitioner's disabilities, it recognizes the need for services to overcome those disabilities and it creates goals and objectives for making significant progress. Petitioner's mother's attempt to impeach the IEP by favoring one eligibility category ([REDACTED]) to the exclusion of a long-standing documented, serious eligibility category ([REDACTED]) raises the spectre that Petitioner's needs will not be adequately addressed in an IEP, that services will be incomplete and that anyone reading the IEP will come away with the wrong impression of Petitioner's disabilities^{37, 38}.

³⁷The Respondent School District is required to reject a parental request that is wholly outside of the accumulated evidence showing the criteria for a disability eligibility determination and the Respondent School District is required to adopt eligibility criteria for

Petitioner's mother's excoriation of the Special Education Director^{39, 40} and her insistence on trying to force the Respondent School District to disregard the overwhelming evidence of Petitioner's [REDACTED] [REDACTED] is a poor substitute for proving that the District's offered IEP is inappropriate⁴¹. The objective evidence shows that Petitioner suffers from [REDACTED] for which special education services are required. Inclusion of [REDACTED] in its categorization of Petitioner as multiply handicapped was an appropriate designation⁴², the IEP that was created by the IEP team on December 20, 2005 was an

which the accumulated evidence exists.

³⁸Petitioner's mother, in her March 16 letter, now tries to expand the reasons for her objections to the December 20 IEP.

³⁹Petitioner's mother's histrionics and her action in storming out of the due process hearing is an echo of her treatment of the Special Education Director during the IEP conference on December 20, 2005 and her accusations against the undersigned are consistent with and characteristic of the lack of evidence to support her burden of proof. In her March 16 letter, Petitioner's mother also attacks the undersigned for lack of sensitivity and requests the assignment of an interpreter for her disability – a disability for which she has no need of an interpreter since she is not ASL and for which she has never identified a specific use.

⁴⁰Petitioner's mother also spared no effort throughout this entire due process litigation to pillory the Respondent School District's attorney and the Governing Board members of the Respondent School District as well as the State Department of Education.

⁴¹The undersigned does believe that any correlation exists between the volume of written objections filed by Petitioner's mother and their merit. The collective vapidness of Petitioner's mother's objections have been well documented and presented herein.

⁴²Irrespective of whether the Respondent School District would receive more special education funds by including the [REDACTED] category.

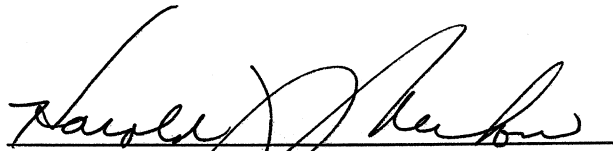
appropriate offer of special education services to Petitioner and there is no basis on which to declare that the IEP offered by the District was inappropriate. As such, all of Petitioner's claims are rejected⁴³, all relief sought by the due process hearing complaint is denied, the Respondent School District is not responsible for delays in developing the December 20 IEP and the Respondent School District is the prevailing party in these proceedings.

⁴³After receiving the March 17 certified mail which requests reconvening the due process hearing, the undersigned informed the parties that the hearing will not be reconvened.

APPEAL RIGHTS

THIS DECISION IS A FINAL DECISION. Any party aggrieved by this decision may file an appeal with the Arizona Department of Education, Exceptional Student Division, 1535 West Jefferson, Phoenix, Arizona, within thirty-five (35) days following your receipt of this decision.

DATED this 21st day of March 2006.



HAROLD J. MERKOW
Due Process Hearing Officer

Duplicate original decisions mailed to:

Petitioner's mother
Counsel for Respondent School District